

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Caprock Cellular Limited Partnership

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File No.: EB-10-SE-172

Acct. No.: 201232100036

FRN: 0001665900

**ORDER**

**Adopted: August 7, 2012****Released: August 7, 2012**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission), Caprock Cellular Limited Partnership, and its managing general partner, CR Telco, Inc. (Caprock). The Consent Decree resolves and terminates the Bureau's investigation into Caprock's compliance with Sections 1.1307(a)(4) and 1.1312(a) of the Commission's rules (Rules)<sup>1</sup> pertaining to the required assessment of the potential effect on the environment of the construction of a wireless communications facility.

2. The Bureau and Caprock have negotiated the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Caprock possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 503(b) of the Communications Act of 1934, as amended,<sup>2</sup> and Sections 0.111 and 0.311 of the Rules,<sup>3</sup> the Consent Decree attached to this Order **IS ADOPTED**.

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<sup>1</sup> 47 C.F.R. §§ 1.1307(a)(4), 1.1312(a).

<sup>2</sup> 47 U.S.C. §§ 154(i), 503(b).

<sup>3</sup> 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Jim Whitefield, President and Chief Executive Officer, CR Telco, Inc., Managing General Partner of Caprock Cellular Limited Partnership, P.O. Box 119, 121 E. Third Street, Spur, Texas 79370, and to Marjorie Spivak, Esq., counsel for Caprock Cellular Limited Partnership, Bennet & Bennet, PLLC, 6124 MacArthur Boulevard, Bethesda, MD 20816.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau

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**CONSENT DECREE**

The Enforcement Bureau of the Federal Communications Commission and Caprock Cellular Limited Partnership, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into possible violations of Sections 1.1307(a)(4) and 1.1312(a) of the Commission's rules<sup>1</sup> pertaining to the required assessment of the potential effect on the environment of the construction of a wireless communications facility.

**I. DEFINITIONS**

1. For the purposes of this Consent Decree, the following definitions shall apply:
  - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
  - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
  - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
  - (d) "Caprock Cellular Limited Partnership" or "Caprock" means Caprock Cellular Limited Partnership and its managing general partner, CR Telco, Inc., as well as their predecessors-in-interest and successors-in-interest.
  - (e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
  - (f) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Caprock is subject by virtue of its business activities, including but not limited to, the Environmental Laws.
  - (g) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 10.

<sup>1</sup> 47 C.F.R. §§ 1.1307(a)(4), 1.1312(a).

- (h) “Covered Employees” means all employees and agents of Caprock who perform, or supervise, oversee, or manage the performance of, duties that relate to Caprock’s responsibilities under the Environmental Rules.
- (i) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (j) “Environmental Rules” means Sections 1.1307(a)(4) and 1.1312(a) of the Rules and other Communications Laws implementing the National Environmental Policy Act of 1969, as amended.<sup>2</sup>
- (k) “Investigation” means the investigation commenced by the Bureau in response to a referral from the Wireless Telecommunications Bureau regarding Caprock’s possible violations of Sections 1.1307(a)(4) and 1.1312(a) of the Rules.<sup>3</sup>
- (l) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by Caprock to implement the Compliance Plan.
- (m) “Parties” means Caprock and the Bureau, each of which is a “Party.”
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

## II. BACKGROUND

2. Section 1.1307(a)(4) of the Rules requires applicants and licensees to consider whether their proposed facilities would affect properties listed or eligible for listing (historic properties) in the National Register of Historic Places (National Register).<sup>4</sup> This obligation expressly applies to facilities for which no pre-construction authorization is required.<sup>5</sup> In considering the potential effects on historic properties, applicants and licensees must, under Section 1.1307(a)(4) of the Rules, follow the prescribed procedures established by the Programmatic Agreements for collocated antennas<sup>6</sup> and for historic preservation review.<sup>7</sup> The Collocation Agreement and the Nationwide Agreement<sup>8</sup> are designed to tailor

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<sup>2</sup> National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1970), as amended (codified at 42 U.S.C. §§ 4321-4347).

<sup>3</sup> See 47 C.F.R. §§ 1.1307(a)(4), 1.1312(a).

<sup>4</sup> See 47 C.F.R. § 1.1307(a)(4). Although the current version of Section 1.1307(a)(4) became effective March 7, 2005, the prior version of Section 1.1307(a)(4) also required the preparation of an Environmental Assessment for “[f]acilities that may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places.” 47 C.F.R. 1.1307(a)(4) (2004).

<sup>5</sup> *Id.* § 1.1312(a) (“In the case of facilities for which no Commission authorization prior to construction is required by the Commission’s rules and regulations the licensee or applicant shall initially ascertain whether the proposed facility may have a significant environmental impact as defined in § 1.1307 of this part ....”).

<sup>6</sup> See *id.* Part 1, App. B (Collocation Agreement); see also *Wireless Telecommunications Bureau Announces Execution of Programmatic Agreement with respect to Collocating Wireless Antennas on Existing Structures*, Public Notice, 16 FCC Rcd 5574 (Wireless Tele. Bur. 2001), *recon. denied*, 20 FCC Rcd 4084 (Wireless Tele. Bur. 2005).

<sup>7</sup> See *id.* Part 1, App. C (Nationwide Agreement); see also *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, WT Docket No. 03-128, 20 FCC Rcd 1073 (2004), *clarified*, 20 FCC Rcd 17995 (2005), *aff’d*, *CTIA-The Wireless Ass’n v. FCC*, 466 F.3d 105 (D.C. Cir. 2006) (*Nationwide Agreement Report and Order*).

and streamline in the context of communications tower and antenna construction the review and consultation procedures required by the National Historic Preservation Act of 1966, as amended (NHPA),<sup>9</sup> and the implementing regulations issued by the Advisory Council on Historic Preservation (Advisory Council).<sup>10</sup> Section 1.1307(a)(4) became effective on March 7, 2005.

3. Caprock is a Tier III wireless carrier serving rural areas in Texas.<sup>11</sup> On March 17, 2005, Caprock notified the FCC via ASR No. 1246558 that it had completed construction of a replacement tower located at Barnett Ranch in Guthrie, Texas, on March 15, 2005.<sup>12</sup> At the time construction was completed, Caprock had not yet performed the required review of the tower's potential effects on historic properties.<sup>13</sup> Caprock explained that it believed that construction of the replacement tower was exempt from the requirements of Section 1.307(a)(4).<sup>14</sup> Caprock subsequently determined that the Burnett Ranch tower did not qualify as a replacement tower "because the height of the replacement tower was substantially increased and the boundaries of the original site were expanded by more than 30 feet."<sup>15</sup>

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<sup>8</sup> Section 1.1307(a)(4) of the Rules incorporates by reference the Collocation Agreement and the Nationwide Agreement. The Nationwide Agreement attaches standardized packets for review of collocated antenna construction (FCC Form 621) and new tower construction (FCC Form 620). *See Nationwide Agreement Report and Order*, 20 FCC Rcd at 1179-1201, Appendix B, Attachments 3 and 4.

<sup>9</sup> 16 U.S.C. § 470 *et seq.* The NHPA requires that a federal agency consider the effects of its federal undertakings, including actions that it authorizes or approves, on historic properties prior to issuing federal licenses, permits, or approvals. *See* 16 U.S.C. §§ 470f, 470w(7). In considering such effects, the NHPA further requires the federal agency to consider the views of expert agencies. Specifically, the NHPA requires the federal agency to consider the views of the Advisory Council on Historic Preservation, the agency tasked with the responsibility for implementing the NHPA, the appropriate State Historic Preservation Officer, and, if affected historic properties are of religious or cultural significance to Indian Tribes or Native Hawaiian organizations, their representatives. *See id.* §§ 470a(a)(3), (d)(6)(B), 470f, 470i. Consistent with the Advisory Council on Historic Preservation's regulations, the Commission's Environmental Rules delegate the task of identification and initial consideration of the effects that proposed facilities may have on historic properties, including identifying and ensuring contact is made with potentially affected Indian Tribes, to its licensees, permittees, and applicants, but the Commission remains ultimately responsible for enforcement of the Environmental Rules. *See* 47 C.F.R. § 1.1307(a)(4); *see also* 36 C.F.R. § 800.2(a)(3); *Nationwide Agreement Report and Order*, 20 FCC Rcd at 1076-77, para. 5.

<sup>10</sup> *See* 36 C.F.R. § 800.1 *et seq.* Under the NHPA and the Advisory Council's implementing regulations, a federal agency may, with the agreement of the Advisory Council and the relevant State Historic Preservation Officer or the National Conference of State Historic Preservation Officers, adopt Programmatic Agreements to tailor the historic preservation review and consultation procedures, as well as exempt actions that are unlikely to affect historic properties. *See* 16 U.S.C. § 470v; 36 C.F.R. § 800.14(b),(c).

<sup>11</sup> Caprock is managed by its general partner, CR Telco, Inc., a wholly owned subsidiary of Cap Rock Telephone Cooperative, Inc., which provides communications service to underserved areas of rural Texas.

<sup>12</sup> *See* Letter from Marjorie Spivak, Esq., Bennet & Bennet PLLC, counsel to Caprock Cellular Limited Partnership, to Dan Abeyta, Spectrum and Competition Policy Division, FCC Wireless Telecommunications Bureau (May 20, 2010) (May 20 Letter) (on file in EB-10-SE-172) at 2. However, Caprock also states that it believes that construction of the Barnett Ranch tower may have been completed prior to March 7, 2005. *Id.* We note that similar NEPA requirements would have applied to the construction of the Barnett Ranch tower even if construction was completed prior to March 2005. *See supra* note 4.

<sup>13</sup> May 20 Letter at 1.

<sup>14</sup> *Id.* at 2.

<sup>15</sup> *Id.* The Nationwide Agreement exempts from historic preservation review the construction of a replacement tower "that does not substantially increase the size of the existing tower . . . and that does not expand the boundaries of the leased or owned property surrounding the tower by more than 30 feet in any direction. . . ." *Nationwide Agreement Report and Order*, Appendix B, 20 FCC Rcd at B-1.

4. After conducting the required historic preservation review of the Barnett Ranch tower, Caprock submitted on July 12, 2010, its FCC Form 620 (FCC Wireless Telecommunications Bureau New Tower (NT) Submission Packet) to the Texas Historic Commission State Historic Preservation Officer (Texas SHPO). The Texas SHPO subsequently stated that if it had been consulted prior to construction of the Barnett Ranch tower, it likely would not have found any adverse effect on historic properties from the construction of the facility. After reviewing these substantive environmental filings, including the findings of the Texas SHPO, WTB referred the matter to the Bureau for investigation and possible enforcement action. The Bureau and Caprock entered into tolling agreements to toll the statute of limitations.<sup>16</sup>

### III. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

6. **Jurisdiction.** Caprock agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Caprock agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against Caprock concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Caprock with respect to Caprock's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission authorizations.

9. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Caprock shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Caprock complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Environmental Rules prior to assuming his/her duties.

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<sup>16</sup> See, e.g., Tolling Agreement Extension, File No. EB-10-SE-172, executed by and between John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, and Jim Whitefield, General Manager, Managing General Partner, CR Telco, Inc. (Apr. 13, 2012).

10. **Compliance Plan.** For purposes of settling the matters set forth herein, Caprock agrees that it shall within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Environmental Rules, Caprock shall implement the following procedures:

- (a) **Operating Procedures on Environmental Rules.** Within sixty (60) calendar days after the Effective Date, Caprock shall establish Operating Procedures that all Covered Employees must follow to help ensure compliance with the Environmental Rules. Caprock's Operating Procedures shall include internal procedures and policies specifically designed to ensure that Caprock performs the required review of the potential effects on the environment and on historic properties of any proposed facilities, including facilities for which no pre-construction authorization is required, prior to the initiation of construction of such proposed facilities. In connection with this Consent Decree, Caprock has developed a Scope of Work for Compliance with the FCC's Environmental Rules (Scope of Work), which Caprock shall incorporate into its Operating Procedures. The Scope of Work sets forth the procedures that Caprock's third-party contractors and Covered Employees who supervise and manage such third-party contractors shall follow to ensure compliance with the Environmental Rules at each stage of the tower construction process. Caprock's Operating Procedures shall incorporate a Compliance Checklist that describes the steps that a Covered Employee must follow to determine whether construction of the proposed facility is categorically excluded from environmental processing under Section 1.1306 of the Rules or may have a significant environmental effect, as defined in Section 1.1307 of the Rules. Caprock shall periodically review and revise the Operating Procedures, including the Scope of Work, as necessary to ensure that it remains current and complete and to enhance its effectiveness.
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Environmental Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Caprock's compliance with the Environmental Rules. Caprock shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. Caprock shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training.** Caprock shall establish and implement a Compliance Training Program on compliance with the Environmental Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Caprock's obligation to report any noncompliance with the Environmental Rules under paragraph 11 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the Effective Date shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Caprock shall repeat the compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

11. **Reporting Noncompliance.** Caprock shall report any noncompliance with the Environmental Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that Caprock has taken or will take to remedy such noncompliance; (iii) the schedule on which such proposed remedial actions will be taken; and (iv) the steps that Caprock has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Rm. 3C366, Washington, D.C. 20554, with copies submitted electronically to Linda Nagel at Linda.Nagel@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.

12. **Compliance Reports.** Caprock shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of Caprock's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Environmental Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Caprock, stating that the Compliance Officer has personal knowledge that Caprock (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 11 hereof.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with Section 1.16 of the Rules<sup>17</sup> and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Caprock, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps that Caprock has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Caprock has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Rm. 3C366, Washington, D.C. 20554. All reports shall also be submitted electronically to Linda Nagel at Linda.Nagel@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.

13. **Termination Date.** Unless stated otherwise, the obligations set forth in paragraphs 9 through 12 of this Consent Decree shall expire twenty-four (24) months after the Effective Date.

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<sup>17</sup> 47 C.F.R. § 1.16.

14. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act against Caprock or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaints will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Caprock with the Communications Laws.

15. **Voluntary Contribution.** Caprock agrees that it will make a voluntary contribution to the United States Treasury in the amount of six thousand five hundred dollars (\$6,500) within thirty (30) calendar days after the Effective Date. Caprock shall also send electronic notification of payment to Linda Nagel at Linda.Nagel@fcc.gov, Ricardo Durham at Ricardo.Durham@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>18</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

16. **Waivers.** Caprock waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. Caprock shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Caprock nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Caprock shall waive any statutory

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<sup>18</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

right to a trial *de novo*. Caprock hereby agrees to waive any claims it may have under the Equal Access to Justice Act<sup>19</sup> relating to the matters addressed in this Consent Decree.

17. **Invalidity**. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

18. **Subsequent Rule or Order**. The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Caprock does not expressly consent), that provision will be superseded by such Rule or Commission order.

19. **Successors and Assigns**. Caprock Cellular Limited Partnership and CR Telco, Inc. agree that the provisions of this Consent Decree shall be binding on their successors, assigns, and transferees.

20. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the Communications Laws.

21. **Modifications**. This Consent Decree cannot be modified without the advance written consent of both Parties.

22. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

23. **Authorized Representative**. The individual signing this Consent Decree on behalf of Caprock represents and warrants that he is authorized by Caprock Cellular Limited Partnership and CR Telco, Inc. to execute this Consent Decree and to bind Caprock to the obligations set forth herein. The FCC signatory represents that he is signing this Consent Decree in his official capacity and that he is authorized to execute this Consent Decree.

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<sup>19</sup> Equal Access to Justice Act, Pub L. No. 96-481, 94 Stat. 2325 (1980) (codified at 5 U.S.C. § 504); *see also* 47 C.F.R. §§ 1.1501-1.1530.

24. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

\_\_\_\_\_  
John D. Poutasse  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jim Whitefield  
President and Chief Executive Officer  
CR Telco, Inc., the managing general partner of Caprock Cellular Limited Partnership

\_\_\_\_\_  
Date